



Administration
& Management

OFFICE OF THE SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1950

August 17, 1981

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ADMINISTRATIVE INSTRUCTION NO. 8

SUBJECT: Disciplinary and Adverse Actions

References: (a) through (h), see enclosure 1

1. PURPOSE

This Instruction establishes procedures for disciplinary and adverse actions and provides guidance to managers contemplating action to deal with misconduct or inefficiency on the part of an employee.

2. APPLICABILITY AND SCOPE

2.1. The provisions of this Instruction apply to all organizational entities of the Office of the Secretary of Defense (OSD) and the Organization of the Joint Chiefs of Staff and to all activities serviced by Washington Headquarters Services (WHS) (hereafter referred to as "OSD Components").

2.2. This Instruction applies to all employees, except those who are:

2.2.1. Reemployed annuitants in the competitive or excepted service.

2.2.2. Serving under temporary appointments with a definite time limit.

2.2.3. Serving a probationary or trial period, or who have completed less than 1 year of current continuous employment.

2.2.4. Preference eligibles with less than 1 year of current continuous employment who are in the excepted service.

2.2.5. Nonpreference eligibles who are in the excepted service.

2.2.6. Specifically excluded in sections 8. and 9., this Instruction.

2.3. While the above employees are excluded from coverage under this Instruction, this does not preclude giving them oral admonishments or reprimands when such actions are consistent with the policies contained here. However, when separation is warranted, their appointments may be terminated without need for compliance with the procedures set forth below.

3. DEFINITIONS

3.1. Informal Disciplinary Action. Minor corrective action that is not made a matter of record for inclusion in the employee's official personnel folder; usually an oral admonition.

3.2. Formal Disciplinary Action. An action that is made a matter of record, for inclusion in the employee's official personnel folder, such as a reprimand or a suspension of 14 days or less.

3.3. Adverse Action. A disciplinary or nondisciplinary removal, suspension of more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay taken for such cause as will promote the efficiency of the service.

3.4. Proposing Official. The official who proposes the action.

3.5. Deciding Official. The official who issues a notice of final decision on an adverse or disciplinary action. The deciding official must be of a higher level than the official who proposes the action, unless the proposing official is the Secretary of Defense.

3.6. Furlough. A temporary nonduty and nonpay status of 30 days or less because of lack of work or funds or for other nondisciplinary reasons.

3.7. Suspension. A temporary nonduty and nonpay status for disciplinary or for other reasons, pending inquiry.

3.8. Grade. The level of classification under a position classification system.

3.9. Pay. The rate of basic pay of an employee, such as the pay fixed by law or administrative action for the position held.

3.10. Removal. A separation (such as an involuntary separation) based on a decision of an appropriately designated management official.

3.11. Unacceptable Performance. Performance of an employee that fails to meet established standards in one or more critical elements of the employee's position.

3.12. Critical Element. A component of the employee's job that is of such importance that performance below the minimum standard requires remedial action and may be the basis for reduction in grade, removal, or other corrective action without regard to performance on other components of the job.

3.13. Reduction in Grade. The involuntary assignment of an employee to a position of lower classification or job grading level.

3.14. Advance Notice. A written notice whose period of time is computed as follows:

3.14.1. A calendar day is the 24-hour period between 12 midnight of one day and 12 midnight of the next.

3.14.2. The day on which the notice is delivered is not counted.

3.14.3. Saturday, Sunday, or a legal holiday is never counted as the last day.

4. POLICY

4.1. When an employee's conduct or capabilities do not promote the efficiency of the Federal service, disciplinary or adverse actions are to be initiated promptly in accordance with the policy and procedures outlined here.

4.2. In deciding whether to take disciplinary action or adverse action, there may be no discrimination against an employee for political beliefs (except as required by law under Federal Personnel Manual (FPM) 733 (reference (a))), marital status, physical handicap, sex, race, religion, color, national origin, or age.

5. RESPONSIBILITIES

5.1. The deciding official shall issue a notice of final decision on an adverse or disciplinary action.

5.2. The Director of Personnel and Security (P&S), WHS, shall:

5.2.1. Provide advice and assistance to supervisory and management officials on disciplinary and adverse actions.

5.2.2. Counsel employees concerning their rights and privileges and standards of conduct.

5.3. The Heads of the OSD Components shall:

5.3.1. Ensure that employees are advised on their rights under this Instruction.

5.3.2. Coordinate all formal disciplinary actions with the Director of P&S, WHS, to ensure the action's conformance with established laws and regulations.

5.3.3. Ensure that each case is processed promptly and fairly and that discipline is uniformly applied.

6. DISCIPLINARY AND REMOVAL ACTIONS

6.1. Selecting the Penalty

6.1.1. General Guidelines. There are many disciplinary situations and a wide variety of penalties. In deciding what action to take, careful judgement must be used so that the penalty is not out of proportion to the character of the offense, especially a first offense, and to ensure that penalties are imposed with consistency and equity. Elements that affect the selection of the appropriate penalty include, but are not limited to:

6.1.1.1. The employee's tenure, work history, previous offenses, contributions to the Department of Defense, the likelihood of recurrence of the offense, or an improvement in the employee's performance based on the employee's past record.

6.1.1.2. The impact of the employee's action or performance on national security, on fellow employees' safety, morale, and efficiency, and on the integrity of the Department of Defense and the Federal Government.

6.1.1.3. The effect of the offense on the employee's ability to perform at a satisfactory level and on the supervisor's confidence in the employee's ability.

6.1.1.4. Mitigating circumstances, such as unusual personal problems that temporarily influence the employee's behavior or newness of the job and lack of knowledge of requirements.

6.1.1.5. Whether a violation of law or regulation may have occurred.

6.1.2. Schedule of Offenses and Penalties. Enclosure 2 provides guidance on the selection of appropriate disciplinary action for typical offenses. Normally, a progression of disciplinary measures is applied in an effort to correct an employee. A single offense rarely warrants the removal of an employee. When appropriate disciplinary action, other than removal, will correct an employee's conduct, discipline becomes the proper course of action, not removal.

6.2. Informal Disciplinary Actions. Admonishments are the first step in constructive discipline. An admonishment is an oral discussion between the supervisor and employee. It is used for an offense that does not, by itself, warrant a reprimand but that will, if repeated, warrant formal disciplinary action. The supervisor makes an informal record of the date of the discussion and the subjects covered. Reference to the admonishment shall be cited in any future action as evidence that the employee was informed of the seriousness of the offense and of possible future disciplinary action. The employee must be advised that an informal record is being kept and that the incident may be cited in future disciplinary action.

6.3. Formal Disciplinary Actions

6.3.1. General. Formal disciplinary actions consist of official reprimands, suspensions, and removals. Formal disciplinary action is initiated by the immediate supervisor or manager of the employee being disciplined. All formal disciplinary actions must be approved by the deciding official.

6.3.2. Reprimands. A reprimand is an official criticism given to an employee in a formal letter for a serious violation of a rule of conduct, law, regulation, official instruction, or particular responsibility. A reprimand also may be given for repeated minor offenses about which the employee has been counseled or for which the employee has been admonished orally.

6.3.3. Suspensions and Removals. When an employee is suspended, he or she is not allowed to work or earn pay for a specified number of days. Suspension for misconduct or delinquency and removal from duty are imposed when an employee fails to improve his or her conduct after being admonished and reprimanded. The action selected depends on the seriousness of the offense. The amount of notice, right to reply, and appeal rights depend upon the employee's appointment, status, and tenure.

7. NONDISCIPLINARY ADVERSE ACTIONS

7.1. General. Adverse action may be taken against an employee covered by this Instruction only for "such cause as will promote the efficiency of the service." A just and substantial cause is necessary as a basis for an adverse action, and the action must be determined on the merits of each individual case. Certain kinds of adverse actions, however, are considered nondisciplinary in nature. For example, separation for inefficiency or disability, reductions in grade or pay as a result of classification actions or reorganization, and furloughs for 30 days or less.

7.2. Inefficiency. Regulations provide that an employee may be removed for inefficiency. However, removal action is to be taken only after all other available means of resolving the problem of inefficiency have been exhausted. Actions such as demotion, transfer, or reassignment, shall be considered before taking removal action under section 9. of this Instruction.

7.3. Separation for Disability. Mental or physical disability may warrant removal under the provisions of this Instruction. However, certain procedural requirements must be satisfied before an employee can be separated for disability. Any proposed removal of an employee for mental or physical disability must be brought to the immediate attention of the Director of P&S, WHS.

7.4. Reduction in Grade or Pay. Reductions in grade or pay constitute adverse actions and are subject to the procedural provisions stated in paragraph 8.4. This section does not apply a reduction in grade or removal under FPM 432 (reference (b)) or a reduction in force under FPM 351 (reference (c)).

7.5. Furlough. A furlough is an adverse action under FPM 752 (reference (d)), if it is for a period of 30 calendar days or less and is based on a decision of an appropriately designated management official. Military furloughs or similar furloughs required by law or regulation are not actions based on decisions of a management official. They are actions required by established facts and are not adverse actions. Furloughs for more than 30 calendar days are reduction-in-force actions.

8. PROCEDURES

8.1. General. Federal law and regulations require that mandatory procedural steps be followed when taking an adverse action or a disciplinary action against an employee. Failure to adhere to these procedural requirements may lead to reversal of an action upon its appeal without consideration of the merits of the case. The procedural requirements cited in this Instruction involve the minimum requirements. It is wise to be generous in applying the procedural protections under this Instruction, rather than to give the employee no more than he or she can possibly claim.

8.2. Official Reprimands

8.2.1. Issuance of Advance Notice

8.2.1.1. The supervisory or management official (proposing official) taking the action shall notify the employee in writing of the proposed reprimand.

8.2.1.2. The written notification shall:

8.2.1.2.1. Contain the reason specifically and in detail for the proposed reprimand.

8.2.1.2.2. Provide the employee the right to reply orally or in writing--or both--within 10 calendar days.

8.2.1.2.3. Indicate that a request for additional time to reply shall be considered by the official proposing the action.

8.2.1.2.4. Inform the employee of his or her rights to be represented by an attorney or other representative and to a reasonable amount of official time to review the material supporting the proposed action. An employee's choice of representative may be disallowed if such representation results in a conflict of interest or position.

8.2.1.2.5. Inform the employee that his or her reply shall be considered and that he or she shall be notified in writing of the final decision.

8.2.1.3. Ensure that all proposed actions are coordinated with the Director of P&S, WHS.

8.2.2. Letter of Reprimand. If, after consideration of the employee's reply to the written notification of the proposed reprimand, it is decided to issue an official reprimand, the letter must:

8.2.2.1. Be issued by the deciding official.

8.2.2.2. Include a statement that the employee's reply, if any, to the proposed reprimand was considered; the reasons stated in the proposed notice are sustained; and the reprimand is found warranted.

8.2.2.3. Contain a statement that a copy of the letter of reprimand will be placed in the employee's official personnel folder for a period not to exceed 2 years. Management officials are authorized to expunge these documents at an earlier date if so desired.

8.2.2.4. Advise the employee of his or her grievance rights under Administrative Instruction No. 37 (reference (e)).

8.2.3. Delivery and Recording of Reprimand

8.2.3.1. Personal delivery of the reprimand shall be made to the employee, if possible.

8.2.3.2. Written acknowledgement of receipt shall be obtained on the copy of the reprimand that is to be placed in the employee's official personnel folder, along with the notice of the proposed reprimand.

8.3. Requirements for Suspensions of 14 Days or Less

8.3.1. Coverage. For the purposes of this section, employee means:

8.3.1.1. An employee in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less;

8.3.1.2. A preference eligible in the excepted service who has completed 1 year of current continuous service in the same or similar position; and

8.3.1.3. An employee with competitive status who occupies a position under a Schedule B appointment.

8.3.1.4. Excluded Employees

8.3.1.4.1. Employees serving a probationary or trial period.

8.3.1.4.2. Employees serving with less than 1 year current continuous service. An employee serving under a Temporary Appointment Pending Establishment of a Register or a special tenure appointment or serving as a status quo employee does not serve a probationary or trial period. During the 1st year of current continuous employment, however, the employee is not covered by FPM 752 (reference (d)).

8.3.1.4.3. Employees serving with temporary tenure. In the competitive service, an employee in a temporary appointment with a definite time limitation serves with temporary tenure and is not covered by reference (d).

8.3.1.4.4. Employees serving under a limited executive assignment.

8.3.1.4.5. Reemployed annuitants.

8.3.1.4.6. A preference eligible with less than 1 year of current continuous employment in the excepted service.

8.3.1.4.7. Employees whose appointment requires Senate confirmation.

8.3.1.4.8. A Schedule B employee without competitive status.

8.3.2. Standard for Action

8.3.2.1. Issuance of Advance Notice

8.3.2.1.1. Except in emergency situations, the employee must be given at least 10 days advance written notice of the proposed suspension.

8.3.2.1.2. The notice must:

8.3.2.1.2.1. Identify the proposed action.

8.3.2.1.2.2. State the reasons for the proposed suspension specifically and in detail.

8.3.2.1.2.3. Inform the employee of his or her right to reply orally or in writing or both to the proposed action.

8.3.2.1.2.4. Allow the employee a minimum of 10 calendar days to secure affidavits, if so desired, and submit a written reply to the proposed action. A reasonable amount of official time shall be provided the employee for purposes of preparing a reply. The amount of time allowed depends on the facts and circumstances of the case and shall be sufficient to afford the employee an opportunity to review the material relied on to support the reasons in the notice and to prepare an answer and secure affidavits.

8.3.2.1.2.5. Inform the employee of his or her right to be represented by an attorney or other representative and the right to review the material supporting the proposed suspension. An employee's choice of representative may be disallowed if such representation would result in a conflict of interest or position.

8.3.2.1.2.6. Indicate that a request for an extension of the time limit allowed for a reply shall be considered by the official designated to accept the response.

8.3.2.1.2.7. Inform the employee of his or her duty status during the notice period.

8.3.2.1.2.8. Indicate that a final decision on the proposed action may not be made until after the employee's reply, if any, has been considered, or after the time allotted the employee to reply has expired.

8.3.2.2. Notice of Final Decision. If, after consideration of the employee's reply to the written notification of the proposed suspension, it is decided that the suspension is warranted, the notice of final decision must:

8.3.2.2.1. Be signed by the deciding official.

8.3.2.2.2. Consider only the reasons specified in the notice of proposed action.

8.3.2.2.3. Indicate whether or not the employee replied to the advance notice and, if so, that his or her reply was considered.

8.3.2.2.4. Inform the employee of his or her grievance rights under Administrative Instruction No. 37 (reference (e)).

8.4. Removals, Suspensions for More than 14 Days, Furlough Without Pay of 30 Days or Less, and Reductions in Grade or Pay

8.4.1. Coverage. For the purposes of this paragraph, employee means:

8.4.1.1. A person in the competitive service who is not serving a probationary or trial period under an initial appointment, or who has completed 1 year of continuous employment under other than a temporary appointment limited to 1 year or less;

8.4.1.2. A preference eligible in an Executive Agency in the excepted service who has completed 1 year of current continuous service in the same or similar positions.

8.4.1.3. This section does not apply to an employee:

8.4.1.3.1. Whose appointment is made by the President with the advice and consent of the Senate.

8.4.1.3.2. Whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by:

8.4.1.3.2.1. The Office of Personnel Management (OPM) for a position that it has excepted from competitive service; or

8.4.1.3.2.2. The President or the head of a Federal Agency for a position that is excepted from the competitive service by statute.

8.4.1.4. Excluded under this section are:

8.4.1.4.1. A suspension or removal taken in the interest of national security.

8.4.1.4.2. A reduction-in-force action.

8.4.1.4.3. A reduction in grade of a supervisor or manager who has not completed the probationary period, if such reduction is to the grade held immediately before becoming a supervisor or manager.

8.4.1.4.4. A reduction in grade or removal based solely on unacceptable performance.

8.4.1.4.5. An involuntary retirement because of disability.

8.4.1.4.6. An action that entitles an employee to grade retention and an action to terminate this entitlement.

8.4.1.4.7. An action against a reemployed annuitant.

8.4.1.4.8. A reduction of an employee's rate of pay from a rate that is contrary to law or regulation to a rate required or permitted by law or regulation.

8.4.1.4.9. An action against a Presidential appointee.

8.4.1.4.10. An action initiated under authority of the Special Counsel under 5 U.S.C. 1206 (reference (f)).

8.4.1.4.11. An action taken under provision of statute, other than one codified in 5 U.S.C. (reference (f)), that excepts the action from subchapter II of Chapter 75 of reference (f).

8.4.1.4.12. A voluntary action initiated by the employee.

8.4.1.4.13. An action taken or directed by the OPM for suitability reasons.

8.4.1.4.14. A termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made.

8.4.1.4.15. An action that terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which temporarily promoted, or reassigns or demotes the employee to a different position not at a lower grade or level than the position from which temporarily promoted.

8.4.1.4.16. An action that terminates a term promotion at the completion of the project, at a specified period, or at the end of a rotational assignment

in excess of 2 years but not more than 5 years, and that returns the employee to the position from which promoted or to a position of equivalent grade and pay.

8.4.1.4.17. Cancellation of a promotion to a position not classified before the promotion.

8.4.1.4.18. Placement of an employee serving on an intermittent, part-time, or seasonal basis in a nonduty, nonpay status, in accordance with conditions established at the time of appointment.

8.4.2. Standard for Action. An employee against whom an action is proposed is entitled to:

8.4.2.1. At least 30 days' advance written notice, stating the specific reasons for the proposed action.

8.4.2.2. A reasonable time, but not less than 10 days, to answer orally or in writing or both and to furnish affidavits and other documentary evidence in support of the answer.

8.4.2.3. Consideration on requests for extension of time to reply to the proposed action by the official designated to receive the response.

8.4.2.4. Be represented by an attorney or other representative, and a reasonable amount of official time to review the evidence.

8.4.2.5. A written decision at the earliest practical date after the employee's reply, if any, has been received or after the time allotted to reply has expired. The notice of decision to the employee shall be delivered at or before the time the action is made effective. The notice of decision shall inform the employee of his or her appeal rights.

8.5. Trial and Probationary Employees

8.5.1. General. The requirement that all career Federal employees serve a probationary period for 1 year provides protection against the retention of any person who, in spite of having passed preliminary tests, is found lacking in fitness and capacity for permanent Government service. When the employee's conduct, general character traits, or capacity does not fit him or her for Government service, the supervisor must initiate action to separate the employee.

8.5.2. Removal Action

8.5.2.1. When the removal action is based on deficiencies in performance or conduct after entrance on duty, the employee must be notified in writing of the reason why he or she is being terminated and the effective date of the action.

8.5.2.2. If the reasons for the termination are based on the employee's conduct before employment, the employee must receive:

8.5.2.2.1. An advance written notice.

8.5.2.2.2. A statement of the reason for removal.

8.5.2.2.3. A notice of the right to reply.

8.5.2.2.4. A consideration of any reply.

8.5.2.2.5. A written notice of the final decision.

8.5.2.2.6. A notice of the right to a procedural review of the removal action by the OPM.

8.6. Excepted Service Employees

8.6.1. General. While the rights of employees serving in positions outside the competitive service generally are limited with regard to disciplinary adverse actions, some excepted employees have the same protection as competitive employees because of Veteran's preference or prior competitive status. Enclosure 3 identifies the sections of this Instruction that must be consulted to determine the rights of excepted employees.

8.6.2. Disciplinary and Removal Actions. An excepted service employee with no protection under law or regulation is to be given written notification of the proposed action before the effective date of the action. The written notification shall contain a brief statement of the reasons for the action and specify the effective date of the action.

9. UNACCEPTABLE PERFORMANCE

9.1. The adverse actions covered in this section are reductions in grade and removals based only on unacceptable performance under 5 U.S.C. 4302 (reference (f)).

9.2. Employees Excluded from this Section

9.2.1. An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed.

9.2.2. An administrative law judge.

9.2.3. An employee in the Senior Executive Service (SES).

9.2.4. An employee appointed by the President with advice and consent of the Senate.

9.2.5. An employee occupying a position not in the competitive service excluded from the coverage of this section by regulations of the OPM.

9.3. Actions Excluded from this Section

9.3.1. An action initiated under authority of Special Counsel, as described in 5 U.S.C. 1206 (reference (f)).

9.3.2. An action taken against an administrative law judge, as described in section 7521 of reference (f).

9.3.3. An action taken in the interests of national security, as described in section 7532 of reference (f).

9.3.4. An action taken under a provision of statute, other than one codified in reference (f), that excepts the action from the provisions of reference (f).

9.3.5. A removal from the SES to a civil service position outside the SES.

9.3.6. A reduction-in-force action.

9.3.7. A voluntary action initiated by the employee.

9.3.8. An adverse action for cause.

9.3.9. An action that terminates a temporary promotion within a maximum of 2 years and returns the employee to the position from which the employee was temporarily promoted or that reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

9.3.10. An action that terminates a term promotion at the completion of the project, at a specified period, or at the end of a rotational assignment in excess of 2 years, but not more than 5 years and that returns the employee to the position from which promoted or to a different position or equivalent grade and pay.

9.3.11. An involuntary retirement because of disability.

9.3.12. A termination in accordance with terms specified at the time the appointment was made.

9.3.13. An action against a reemployed annuitant.

9.3.14. A reduction to the grade previously held by a supervisor or manager who has not completed the supervisory or managerial probationary period.

9.3.15. A reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less.

9.3.16. A reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions.

9.4. Timing of Actions

9.4.1. As a prerequisite to the initial steps toward removal, the employee must be advised of his or her unsatisfactory performance, and supervisory assistance must be provided in correcting the identified deficiencies. The employee shall be advised of the work requirements he or she must satisfy and be given a reasonable opportunity to meet them. This reasonable opportunity to meet work requirements constitutes a "full and reasonable trial," and may not be less than 30 calendar days. If, after the full and reasonable trial, the employee fails to meet the minimal acceptable work standards established, action to remove or demote may then be initiated.

9.4.2. Initiation. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that performance in one or more critical elements of the job becomes unacceptable.

9.4.3. Limitation. The decision to reduce in grade or remove may be based only on those instances of unacceptable performance by the employee that occurred during the 1-year period ending on the date of the notice of proposed action.

9.4.4. If, because of performance improvement of the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any OSD record relating to the employee.

9.5. Procedures. An employee whose reduction in grade or removal is proposed under this section is entitled to:

9.5.1. Thirty days advance written notice that identifies:

9.5.1.1. Specific instances of unacceptable performance on which the proposed action is based.

9.5.1.2. The critical elements of the employee's position in each instance of unacceptable performance.

9.5.2. A reasonable time to reply to the advance notice, orally, in writing, or both. A request for additional time to reply to the proposed action will be considered by the official designated to receive the response.

9.5.3. Be represented by an attorney or other representative.

9.5.4. A written decision within 30 days after expiration of the notice period that:

9.5.4.1. Specifies the instances of unacceptable performance by the employee on which the action to reduce in grade or remove is based.

9.5.4.2. Has been concurred in by the deciding official.


9.5.4.3. Advises the employee of his or her appeal rights.

9.6. Relationship to Adverse Actions. An action against an employee that is considered a combination of misconduct and unacceptable performance is processed under FPM 752 (reference (d)), after having been reviewed under FPM 432 (reference

(b)) and reference (d). The provisions of 5 U.S.C. 4302 (reference (f)) are not to be used until a Performance Appraisal Plan is approved.

10. EFFECTIVE DATE

This Instruction is effective immediately.



D. O. Cooke
Deputy Assistant Secretary of Defense

Enclosures - 4

- E1. References, continued
- E2. Guide to Disciplinary Actions
- E3. Guide to Sections of Instruction Applicable to Employees in Excepted Service
- E4. Sample Letters

E1. ENCLOSURE 1

REFERENCES, continued

- (a) Federal Personnel Manual 733, "Political Activity of Federal Employees"
- (b) Federal Personnel Manual 432, "Reductions in Grade and Removal Based on Unacceptable Performance"
- (c) Federal Personnel Manual 351, "Reduction in Force"
- (d) Federal Personnel Manual 752, "Adverse Actions by Agencies"
- (e) *Administrative Instruction No. 37, "Employee Grievances," August 12, 1981*
- (f) Title 5, United States Code
- (g) *Administrative Instruction No. 52, "Standards of Conduct and Reporting of Defense-Related Employment," September 12, 1977*
- (h) *Administrative Instruction No. 69, "Security Violations," September 4, 1979*

E2. ENCLOSURE 2

GUIDE TO DISCIPLINARY ACTIONS

E2.1.1. This guide assists in selecting appropriate penalties. It does not replace supervisory judgment, and it does not dictate penalties. Rather, this guide provides a general framework within which supervisors may exercise mature judgment in dealing with particular circumstances.

E2.1.2. The column "Offense" does not include every potential cause. In using this column, the supervisor compares the current cause of action to all of those described and uses those that relate to the situation to assist him or her in applying the general policy. By relating the nature and seriousness of the current offense to the fundamental character of those listed, the supervisor fits this offense into the general framework. (If there is a directly applicable cause of action shown, it is the one used to guide further consideration.)

E2.1.3. The "Penalty" column establishes the range of penalties within which the penalty to be assessed usually falls, and the maximum penalty that can be assessed for an offense of comparable nature. The supervisor has available to him or her a choice of severity of action ranging from no penalty at all to the maximum stated in the range. Thus, if the guide shows reprimand as the maximum, the supervisor may determine that no penalty is needed, or may use either an oral admonishment or a reprimand. If suspension is the listed maximum, an admonishment, a reprimand or a suspension of any number of calendar days up to and including that shown in the guide could be assessed. A maximum penalty of removal permits a choice of an admonishment, a reprimand, a suspension of 14 days or less, or a removal.

SELECTING THE PENALTY

<p>Use this table with the tables that follow. It shows the interrelationships of the key factors in the disciplinary system, but neither establishes additional procedural requirements nor automatically sets penalties.</p> <p>Information on how basic penalty was derived and on how favorable elements were considered need not be included in notices but must be available for subsequent use.</p> <p>Information must be included in the notices of any consideration used to increase the severity of the basic penalty.</p>			
<p>1. Basic penalty is the one that would be used if there were no other considerations. It is based on:</p> <p>a. Offense</p> <p>(1) Character</p> <p>(2) Seriousness</p> <p>(3) Consequences</p> <p>b. Rehabilitative potential of penalty</p> <p>c. Character of employee's position.</p>	<p>2. Favorable elements are those considerations that tend toward the imposition of less severe penalties. Included are:</p> <p>a. Situation</p> <p>(1) Possibility of genuine misunderstanding.</p> <p>(2) Enticements or provocations.</p> <p>(3) Culpabilities of others.</p> <p>(4) Mitigating circumstances.</p> <p>b. Employee</p> <p>(1) Length of service.</p> <p>(2) Quality of work history.</p> <p>(3) Personal reputation.</p> <p>(4) Past contributions.</p> <p>(5) Record of cooperation.</p> <p>(6) Record of achievements.</p>	<p>3. Unfavorable elements are considerations that tend to show a need for more severe action than is usually taken. Included are:</p> <p>a. Penalties for past offense within:</p> <p>(1) Suspension - 3 years.</p> <p>(2) Reprimand - 2 years.</p> <p>(3) Admonishment - 2 years.</p> <p>b. Combination of offenses.</p> <p>c. Series of offenses.</p> <p>d. Character of other offenses.</p> <p>e. Recency of other offenses.</p> <p>f. Employee willfulness.</p>	<p>4. Penalty assessed results from weighing of favorable and unfavorable factors in relationship to the offense.</p> <p>a. Proposed penalty is determined on the basis of all information available at time of institution of action and is specifically stated in notice of proposed action.</p> <p>b. Penalty decided upon is determined based on all available information including employee's reply to notice of proposed action. Give consideration to plea for compassion. State penalty decided upon and effective date in notice of decision.</p>

SUGGESTED DISCIPLINE FOR CERTAIN OFFENSES**Standard Schedule of Disciplinary Offenses and Penalties for Employees of the Office of the Secretary of Defense**

NOTE: This schedule is intended as a guide. It is not to be applied routinely and should be used in conjunction with the regulations cited as references.

<u>OFFENSE</u>	<u>PENALTY</u> (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral admonishment.)		
	<u>OFFENSE</u>		
	First	Second	Third
1. Unauthorized absence of 8 hours or less, repeated tardiness, or leaving the job without permission.	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
2. Excessive unauthorized absence (more than 1 work day).	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
3. Failure to request leave according to established procedures.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
4. Failure to honor a valid denial of a leave request.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
5. Falsifying attendance record of oneself or another employee.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
6. Disobedience to constituted authorities or refusal to carry out any legitimate order from any supervisor having responsibility for the work of the employee: insubordination.	Reprimand to 5-day suspension	5-day suspension to removal	10-day suspension to removal
7. Failure or delay in carrying out work assignments or instructions within a reasonable period of time.	Reprimand	Reprimand to 5-day suspension	Reprimand to removal

SUGGESTED DISCIPLINE FOR CERTAIN OFFENSES, continued

<u>OFFENSE</u>	<u>PENALTY</u> (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral admonishment.)		
	<u>OFFENSE</u>		
	First	Second	Third
8. Loafing or sleeping on duty:			
a. When hazard to personnel or property is not acute or when no injury or loss is involved.	Reprimand	Reprimand to 10-day suspension	Reprimand to removal
b. When hazard to personnel or property is acute or when there has been injury or significant loss.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
9. Endangering the safety of or causing injury to personnel through carelessness or failure to follow instructions.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
10. Rude, boisterous play that adversely affects production, discipline, or morale; use of abusive or offensive language; quarreling or inciting to quarrel; or interfering with production of others.	Reprimand to 5-day suspension	Reprimand to removal	Reprimand to removal
11. Fighting; threatening or inflicting bodily harm on another; physical resistance to competent authority; or indecent or immoral conduct.	Reprimand to removal	Reprimand to removal	5-day suspension to removal
12. Unauthorized possession of, use of, loss of, damage to, or willful destruction of Government property, records, or information.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
13. Any action or failure to take action based on race, color, religion, sex, age, or handicapping condition or national origin of an employee, former employee, or applicant that affects his or her rights, privileges, benefits) dignity, and equality of economic opportunity. Consider circumstances and the effect on the person discriminated against, use of abusive language, violent treatment, or insulting demeanor.	Reprimand to 5-day suspension	Reprimand to 10-day suspension	10-day suspension to removal
14. Actual or attempted taking or carrying away of Government property or the property of others.	Reprimand to removal	Reprimand to removal	5-day suspension to removal

SUGGESTED DISCIPLINE FOR CERTAIN OFFENSES, continued

<u>OFFENSE</u>		<u>PENALTY</u> (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral admonishment.)		
		<u>OFFENSE</u>		
		First	Second	Third
15.	Gambling during working hours.	Reprimand	Reprimand to 5-day suspension	Reprimand to removal
16.	Promotion or assisting in operation of organized gambling on duty or on premises.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
17.	Soliciting contributions from other Government officers or employees for gifts or presents to those in superior official positions or accepting gifts or presents offered or presented as contributions from persons in Government employ receiving lower salary.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
18.	Failure to honor valid debts or legal obligations. (In determining whether an offense has occurred, consider whether extenuating circumstances have developed after the employee incurred the obligation and the employee's previous record.)	Reprimand	Reprimand	Reprimand to removal
19.	Drinking or selling intoxicants on duty or on Government premises, except where authorized.	Reprimand to 5-day suspension	Reprimand to removal	5-day suspension to removal
20.	Unauthorized sale or transfer of narcotics or dangerous drugs on Government premises or during duty hours.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal
21.	Reporting or being on duty so intoxicated or under the influence of drugs as to be unable to perform assigned duties properly, or to be a hazard to self or others.	Reprimand to removal	5-day suspension to removal	10-day suspension to removal

SUGGESTED DISCIPLINE FOR CERTAIN OFFENSES, continued

<u>OFFENSE</u>	<u>PENALTY</u> (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral admonishment.)		
	<u>OFFENSE</u>		
	First	Second	Third
22. <i>Making statements against coworkers, supervisors, subordinates, or Government officials that are malicious or known by the employee to be inaccurate and that damage the reputation or undermine the authority of those concerned.</i>	<i>Reprimand to removal</i>	<i>114-day suspension to removal</i>	<i>30-day suspension to removal</i>
23. <i>Discourtesy. (Penalty for 4th offense within 1 year may be 14-day suspension to removal.)</i>	<i>Oral admonishment to 1-day suspension</i>	<i>Reprimand to 5-day suspension</i>	<i>1-day to 10-day suspension</i>
24. <i>Misuse of official Government credential.</i>	<i>Reprimand to removal</i>	<i>5-day suspension to removal</i>	<i>14-day suspension to removal</i>
25. <i>Deliberate misrepresentation, falsification, exaggeration, concealment or withholding of a material fact, or refusal to testify or cooperate with an authorized investigation or an official in connection with an official proceeding.</i>	<i>Reprimand to removal</i>	<i>1-day suspension to removal</i>	<i>5-day suspension to removal</i>
26. <i>Negligent performance of duties:</i>			
a. <i>When waste or other cost is less than \$100.</i>	<i>Oral admonishment to reprimand</i>	<i>Reprimand to 5-day suspension</i>	<i>5-day to 30-day suspension</i>
b. <i>When waste or other cost is substantial.</i>	<i>1-day to 5-day suspension</i>	<i>5-day suspension to removal</i>	<i>30-day suspension to removal</i>
27. <i>Failure to report to proper authorities, or concealment of, violations of Federal statutes or DoD Standards of Conduct (See Administrative Instruction No. 52, reference (g)); fraud, waste, or abuse of Federal funds; or aiding or abetting others in the taking, disposing, or using of Government property or facilities of any kind for other than official Government purposes.</i>	<i>Reprimand to removal</i>	<i>5-day suspension to removal</i>	<i>10-day suspension to removal</i>

SUGGESTED DISCIPLINE FOR CERTAIN OFFENSES, continued

<u>OFFENSE</u>	<u>PENALTY</u> (Unless otherwise restricted, the supervisor has the option of imposing no penalty or of using an oral admonishment.)		
	<u>OFFENSE</u>		
	First	Second	Third
28. <i>Violation of security regulations.</i>	<i>See Administrative Instruction No. 69 (reference (h))</i>		
29. <i>Violation of other administrative rules or regulations not specifically mentioned here. Consider the employee's obligation to be aware of pertinent rules or regulations; the significance or frequency of violations; and the degree of adverse effect on production, morale, maintenance of discipline, external relationships, or reputation of the OSD.</i>	<i>Reprimand to removal</i>	<i>Reprimand to removal</i>	<i>Reprimand to removal</i>

E3. ENCLOSURE 3

GUIDE TO SECTIONS OF INSTRUCTION APPLICABLE TO EMPLOYEES IN
EXCEPTED SERVICE

<u>Type of Employee</u>	<u>Schedule A</u>	<u>Schedule B</u>	<u>Schedule C</u>	<u>Noncareer Executive Assignment</u>
Nonpreference and Nonstatus	Subparagraph 8.6.2. Section 9.	Subparagraph 8.6.2. Section 9.	Subparagraph 8.6.2. Section 9.	Subparagraph 8.6.2. Section 9.
Nonpreference with Competitive Status	Subparagraph 8.6.2. Section 9.	Paragraphs 8.2., 8.3., 8.4.	Subparagraph 8.6.2.	Subparagraph 8.6.2.
Nonpreference with Status in Excepted Position	Paragraphs 8.2., 8.3., 8.4. Section 9.	Paragraphs 8.2., 8.3., 8.4. Section 9.	Paragraphs 8.2., 8.3., 8.4. Section 9.	Paragraphs 8.2., 8.3., 8.4. Section 9.
Preference Eligible Who Has 1 Year of Current Continuous Employment	Paragraph 8.2., 8.3., 8.4. Section 9.	Paragraph 8.2., 8.3., 8.4. Section 9.	Paragraph 8.2., 8.3., 8.4. Section 9.	Paragraph 8.2., 8.3., 8.4. Section 9.

E4. ENCLOSURE 4

SAMPLE NOTICE OF PROPOSED REPRIMAND

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Proposed Reprimand

This is to notify you that it is proposed to reprimand you for continued absences without leave.

You were counseled by (name) concerning your attendance record on September 1, 1980. You subsequently were counseled by the undersigned on September 13. Since October 12, 1980, you have been absent without leave on two occasions for a total of 16 hours. You did not have your supervisor's approval for these absences.

Specifically, you were absent without leave for 8 hours on each of the following dates:

October 12, 1980

October 16, 1980

You have the right to reply to this proposal orally or in writing--or both--within 10 calendar days of receipt of this notice. You will be allowed a reasonable amount of official time to review the material relied upon to support this proposal. You may be represented by a representative of your choosing in presenting your reply.

Your reply, if any, will be given careful consideration, and you will be advised in writing of the final decision. A request for an extension of time to reply will be considered by the undersigned if submitted in writing.

(Signature and Title)

Receipt Acknowledged:

SAMPLE NOTICE OF PROPOSED REPRIMAND

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Reprimand

By memorandum dated (date), you were informed of a proposal, to reprimand you for your continued absences without leave.

I have given full consideration to the information you presented in your written reply of (date). I find, however, that the specific instances of unauthorized absences cited in paragraph 3 of the notice of (date) are fully supported by evidence. It is my decision to issue you a formal notice of reprimand.

A copy of this notice will be filed in your official personnel folder for a period not to exceed 2 years.

You have the right to request reconsideration of the action taken to reprimand you under the procedures outlined in Administrative Instruction 37, "Employee Grievances." This request must be submitted no later than 15 calendar days following the receipt of this memorandum.

(Signature and Title)

Receipt Acknowledged:

SAMPLE NOTICE OF PROPOSED SUSPENSION
(14 DAYS OR LESS)

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Proposed Suspension

You are hereby advised that it is proposed to suspend you from duty and pay for a period of 5 calendar days for your second offense of absent without leave. Specifically, you did not report for duty on February 12 and 13, 1981. Leave was neither requested nor approved for these two days. Therefore, you were carried in an absent-without-leave status.

In proposing this suspension, I have considered the fact that you were issued a letter of reprimand on (date) for your first offense of absent without leave.

You have a right to reply to this notice orally or in writing or both and to furnish affidavits or other evidence in support of your reply. You may be represented by an attorney or other representative of your choosing in presenting your reply. You have a right to review the material relied upon to support this proposal and will be allowed a reasonable amount of official time, to review this material and prepare your reply. Arrangements for reviewing the material and for use of official time may be made by contacting the undersigned at extension _____. Your reply, if any, must be made to or received by the undersigned not later than 10 calendar days from the date of your receipt of this notice. You will receive a written notice of decision as soon as practical after your reply or after the expiration of the time limit, if you choose not to reply.

You are entitled to remain in a duty status during this period.

(Signature and Title)

Receipt Acknowledged:

SAMPLE NOTICE OF DECISION TO SUSPEND
(14 DAYS OR LESS)

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Final Decision to Suspend

Reference is made to the memorandum dated (date), subject: Notice of Proposed Suspension, and your response.

I have given full and careful consideration to your response and find that the charges outlined in the (date) memorandum are fully supported by the evidence and warrant your suspension. It is my decision to suspend you from duty and pay from 0830 hours (date) through 1700 (date).

You are advised that you have the right to submit a grievance as outlined in Administrative Instruction No. 37, "Employee Grievances," within 15 calendar days, beginning with the effective date of the suspension (date). If you wish to pursue this action, you may contact the Employee Management Relations Division, Directorate for Personnel and Security, Washington Headquarters.

(Signature and Title)

Receipt Acknowledged:

SAMPLE NOTICE OF PROPOSED REMOVAL

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Proposed Removal

This is to advise you that I propose to remove you from the Federal Service not earlier than 30 days from the date of your receipt of this notice. This action is being proposed because you have been absent without leave on (date) and (date) since your return from suspension for this offense.

In proposing this action, I have taken into consideration the letter of reprimand dated (date) and received by you on (date) concerning two instances of absences without leave and your suspension from duty and pay from 0830 on (date) to 1700 on (date) concerning two instances of being absent without leave.

You have a right to review the material relied upon to support this proposal. You have a right to reply to these charges both orally and in writing--or both--and to furnish affidavits or other documentary evidence in support of your reply. You may be represented by an attorney or other representative of your choosing in making your reply. You will be given a reasonable amount of official time to review the material relied upon to support this proposal and to prepare your reply. Arrangements for the use of official time may be made by contacting the undersigned. Your reply, if any, must be made to or received by the undersigned within 10 calendar days of your receipt of this notice. You will be given a written notice of decision as soon as practical after you reply, or after the time has expired for your reply.

You are entitled to remain in a duty status during this notice period.

(Signature and Title)

Receipt Acknowledged:

SAMPLE NOTICE OF REMOVAL

(Appropriate Letterhead)

MEMORANDUM FOR (EMPLOYEE)

SUBJECT: Notice of Removal

By memorandum dated (date) and received by you on (date), you were advised of a proposal to remove you from the Federal Service not later than 30 days from the date of your receipt of the notice.

In the notice of proposed removal, you were advised of your right to reply orally or in writing within 10 calendar days following your receipt of the notice. To date, no reply has been received. I have decided that the reasons stated in the Notice of Proposed Removal of (date) are fully supported by the evidence and warrant your removal to promote the efficiency of the service. It is my decision that you be removed effective (date).

You have a right to appeal this decision to the Merit Systems Protection Board. An appeal may be made not later than 20 calendar days after the effective date of this action. Such an appeal should be addressed to the Merit Systems Protection Board (MSPB), Washington, DC, Field Office, Skyline Place #2, 5203 Leesburg Pike, Baileys Crossroads, Virginia 22041. An appeal must give your reasons for contesting the action, with any proof and documents you are able to submit, and should be filed on the appeal form attached. A copy of the MSPB's regulations governing appeals is also attached.

(Signature and Title)

Receipt Acknowledged:
